THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.25690 of 2007

Dated : 04-12-2007

Between :

D. Ramana Kumar

… Petitioner/s

And

T. Sita Rao, w/o. Sri T.Koteswara Rao,
Aged about 52 years, resident of Plot No.213,
Road No.6, Ramakrishnapuram,
Saroornagar, Hyderabad and 2 others.

…
Respondent/s

THE HON'BLE SRI JUSTICE D.S.R. VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.25690 of 2007

ORAL ORDER : (per the Hon'ble Sri Justice D.S.R. Varma)

Heard learned counsel for the petitioner, learned counsel for first respondent, and the Assistant Solicitor General appearing for the Central Government.

2. This Writ of Certiorari is filed seeking to quash the order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for brevity 'the Tribunal'), passed in M.A.No.397 of

2007 in O.A.No.765 of 2007, dated
28-11-2007, suspending the proceedings of transfer in Office order No.31 of 2007, dated 12-11-2007, passed by the second respondent therein viz., the Director, Ministry of Labour and Employment, Government of India, New Delhi.

3. The facts, in brief, are that respondent No.1 was working as Regional Labour Commissioner (Central), at Hyderabad. While so, certain transfers were effected by the competent authority i.e., third respondent herein, by Office order No.31 of 2007, dated 12-11-2007, transferring five incumbents from one place to another, including the writ petitioner and respondent No.1 herein. Aggrieved by the said transfer order, respondent No.1 approached the Tribunal by way of filing O.A.No.765 of 2007. Along with the O.A., she also filed an interlocutory application seeking suspension of the said transfer order. The Tribunal, after going through the material available on record, initially by order, dated
14-11-2007, suspended the order of transfer, so far as it relates to respondent No.1, on the ground that she is the mother of a mentally retarded child. Subsequently, on an application M.A.No.397 of 2007 filed by the writ petitioner, who was transferred from Bangalore to Hyderabad at his request by the same proceedings, seeking vacation of the said interim orders, the Tribunal, by order dated 28-11-2007, dismissed the said application, thereby confirming the suspension of transfer order of respondent No.1 herein, pending disposal of the main O.A. Aggrieved by the same, the petitioner filed the present writ petition.

4. While granting interim suspension of the transfer order, dated 12-11-2007, the Tribunal observed that it was not known under what circumstances the applicant (respondent No.1) was transferred with such immediate effect and was relieved within a

day on the very next day of passing the orders at Delhi. It was further observed that the transfer order does not give any reasons for such abrupt transfer of the applicant before it.

5. But, the factual matrix, which is not in dispute, is that respondent No.1 herein has been working in Hyderabad, in one capacity or the other, allegedly for the past 19 ½ years, barring a few months. However, no details are placed on record, in this regard, nor we are inclined to enter into that contentious aspect.

6. It is the contention of the learned counsel for respondent No.1 that respondent No.1 has a grown up son, aged about 22 years, who is mentally challenged, and is allegedly under medical treatment. The learned counsel further relies on two Circulars No.AB-14017/41/90-Estt RR (Vol.II),
dated 05-01-1993, and D.P.T., O.M.No.AB-14017/41/
90-Estt.(R.R.), dated 15-02-1991, issued by Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi, which envisage that the facilities for medical care and education of mentally retarded children shall be taken into account while posting the parent of a mentally retarded children at different stations.

7. For the sake of convenience and ready reference, the relevant portion of the Circular, dated 05-01-1993, is extracted hereunder:

> "The matter has been examined. Considering that the facilities for medical care and education of mentally retarded children may not be available at all stations, such requests from the parent of a mentally retarded child may as far as possible be considered sympathetically. Where, however, this may not be possible, efforts may be made to accommodate such a Government servant in the same State to the extent possible. The same approach may be adopted in the cases of Government servants having physically handicapped children

who require special medical treatment due to chronic ailments or disabilities."

8. From the very language, it appears that to the extent possible, the medical care and other facilities in case of employees having mentally retarded children shall be considered. If not possible, efforts may be made to accommodate such incumbents in the same State, to the extent possible. The very expressions "*may be*" and "*to the extent possible*" would imply that it is not imperative for the competent authority to retain the incumbent at one place on account of having mentally challenged children. It is always open for the competent authority to explore all other possibilities.

9. In our considered view, the guideline of the competent authority was by way of relaxation from the normal rule that the incumbent shall be transferred after completion of a specified period at a particular place. It is rather by way of compassionate measure that the incumbents having mentally challenged children will be permitted to stay at one place, in one capacity or the other, where appropriate medical care is available.

10. It is not known, nor there is any material on record to show that at Nagpur, the place where respondent No.1 was transferred from Hyderabad, there is no such medical care available and Hyderabad is the only place where medical care for such mentally retarded children is available, and that what kind of treatment the said mentally challenged children is undergoing is also not on record. There is no specific averment in this regard.

11. Further, it is to be seen that though respondent No.1 filed O.A., seeking suspension of her transfer order, the entire focus was only against the writ petitioner by making allegations that on earlier occasions, when the writ petitioner was transferred to other places, he did not join the duty and some how managed to

stay at Hyderabad only. It is obvious from the said averments and also from the record that at present the writ petitioner has been working at Bangalore and he made a request seeking transfer to Hyderabad. The reasons for such request are not available on record. However, this Court is not inquisitive to know the rationality or otherwise of the request made by the writ petitioner while seeking transfer. It is not that the competent authority would pass orders basing on mere request made by the incumbent, but only after taking stock of the situation, appropriate orders will be passed.

12. It is further to be seen that by the said transfer order, dated 12-11-2007, it is not only the writ petitioner and respondent No.1, but three other persons were also transferred from one place to another. It is also born out from the record that along with the writ petitioner, another incumbent also sought request transfer and the same was considered, and for which no reason was assigned.

13. In this context, it is to be remembered that reasons are not necessarily to be assigned in each and every case where transfers were effected. It is not for the Tribunal or the Court to interpret the request or the reasons for making such transfer, unless it is apparent on record that such transfer proceedings have been effected on three grounds known to law viz.,
(1) lack of jurisdiction (2) contrary to rules, and (3) malafides.

14. Normally, when malafide is specifically attributed to a particular authority, the said authority shall be added as a party, because malafide on the part of the competent authority is something very serious, which is to be looked into.

15. In the instant case, a scan of the impugned transfer order, dated 12-11-2007, before the Tribunal, reveals that no such malafides are attributed against the competent authority. On the

other hand, malafides are attributed against the writ petitioner only.

16. Learned counsel for respondent No.1 further submits that when a transfer is made arbitrarily, the Courts have jurisdiction to interfere with such transfer. In support of his contention, he relied on a judgment of the apex Court in **MOHD. MASOOD AHMAD vs. STATE OF U.P.**[1] wherein the apex Court, while relying on various other judgments rendered by it, had observed that arbitrariness can also be a ground to declare an order of transfer as vitiated, in addition to the established grounds, as already referred to above.

17. In this context, the learned Assistant Solicitor General submitted that if it is a solitary case, an attempt could be made to draw an inference that there was arbitrariness. But, in the instant case, as many as five incumbents were transferred from one place to another, including the writ petitioner and respondent No.1. That itself is an indication to show that the said transfers were effected only on administrative grounds.

18. The learned Assistant Solicitor General further contended that for each and every case, reasons need not be assigned in the impugned order itself.

19. As already pointed out, we agree with the said contention that in the impugned order itself the reasons need not specifically be assigned by the competent authority. It is for the Tribunal to go into those aspects at the time of final hearing of the O.A., and not at the interlocutory stage. No doubt, at the interlocutory stage, if there is something apparent from the impugned order before the Tribunal, the same can be suspended.

20. The reason for the Tribunal to suspend the impugned

order of transfer, dated 12-11-2007, is
non-assigning of any reason. But, we do not find any such apparent reason to suspend the order of transfer.

21. For the foregoing, in the absence of any of the norms prescribed by the apex Court, time and again, we do not find any valid reason in the order, dated
28-11-2007, passed by the Tribunal, suspending the impugned order of transfer, dated 12-11-2007, and the same is liable to be set aside.

22. Accordingly, the writ petition is allowed, at the stage of admission, setting aside the order of the Tribunal passed in M.A.No.397 of 2007 in O.A.No.765 of 2007, dated
28-11-2007, with a direction to the Tribunal to dispose of the O.A., as expeditiously as possible, inasmuch as the case is that of transfer of an incumbent having a mentally challenged child. There shall be no order as to costs.

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JUSTICE D.S.R. VARMA

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JUSTICE K.C. BHANU

04-12-2007
Msr

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[1] (2007) 8 SCC 150